

CLERK'S OFFICE U.S. DIST. COURT
AT ABINGDON, VA
FILED**SEALED**

AO 91 (Rev. 11/11) Criminal Complaint

AUG 10 2017

UNITED STATES DISTRICT COURT

for the

Western District of Virginia

JULIA C. DUDLEY, CLERK
BY: *[Signature]*
DEPUTY CLERK

United States of America)

v.)

Joel A. SMITHERS)

Case No. 1:17mj143

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of March 7, 2017 in the county of Henry in the
Western District of Virginia, the defendant(s) violated:*Code Section**Offense Description*Title 21 United States Code,
Sections 841(a)(1)
Title 21 United States Code
Sections 841 (b)(1)(C)

possession with intent to distribute Schedule II controlled substances

This criminal complaint is based on these facts:

Please see attached affidavit

☒ Continued on the attached sheet.*Anita L. Sowers*

Complainant's signature

Anita L. Sowers Task Force Officer

Printed name and title

Sworn to before me and signed *telephonically* ~~in my~~ presence.

Date:

8/10/17

City and state:

Abingdon, Virginia

Pamela M. Sargent

Judge's signature

Honorable Pamela M. Sargent

Printed name and title

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ABINGDON

IN THE MATTER OF THE ARREST OF:)

Joel A. SMITHERS)

) No. _____
)
)

AFFIDAVIT IN SUPPORT OF ARREST WARRANTS

I, Anita L. Sowers, having been duly sworn and appointed as a Task Force Officer (TFO) for the United States Drug Enforcement Administration (DEA), do hereby state as follows:

1. Your Affiant is a Task Force Officer with the DEA and has been so since January 2017. Your Affiant is currently assigned to the Roanoke Resident Office (RRO) Tactical Diversion Squad (TDS) within the DEA's Washington Division, where your Affiant's duties include, but are not limited to, the investigation of prescription drug diversion, prescription drug distribution and doctor shopping (defined as seeking care from multiple medical practitioners, often at the same time, in order to receive multiple prescriptions for controlled substances) in Southwest Virginia. Your Affiant is "an investigative or law enforcement officer" within the meaning of Federal Rule of Criminal Procedure 41(a)(2)(c). Your Affiant completed a seventeen (17) week basic law enforcement training program provided by the Commonwealth of Virginia, Department of Criminal Justice Services, and served as a Police Officer with the City of Martinsville, Virginia. Your Affiant has been a certified law enforcement officer for 18 years. In that capacity, your Affiant's duties include the investigation of general felony offenses, including assisting the Narcotics Division with drug related offenses. In January 2017, your Affiant was deputized as a Task Force Officer with the DEA. Your Affiant has received special training in drug identification and drug diversion methods from various local, state, and federal law enforcement and regulatory agencies.

2. In connection with my duties, your Affiant makes this Application as part of a criminal investigation involving Joel A. SMITHERS, who is a licensed physician of osteopathic medicine (DO).

3. This affidavit is made in support of an application for an arrest warrant for Joel A. SMITHERS (hereafter referred to as SMITHERS) on the charge of on March 7, 2017, knowingly and intentionally possessing with the intent to distribute Schedule II controlled substances, in violation of Title 21, United State Code, Sections 841(a)(1) and 841(b)(1)(C).

4. This affidavit contains information necessary to support probable cause for this application. It is not intended to include each and every fact and matter observed by your Affiant or known to the government.

5. The facts and information contained in this affidavit are based upon your Affiant's personal knowledge of the investigation, information provided to your Affiant by other law enforcement officers and agents, information provided by cooperating individuals, and other information gathered during the course of the investigation. SMITHERS is registered with the DEA as a Practitioner of Osteopathy and Surgery under DEA Registration number FS4850459 (expiration 02/29/2020). SMITHERS is authorized by the DEA Registration to prescribe controlled substances in Schedule 2, 2N, 3, 3N, 4, and 5. SMITHERS DEA Registration allows him to prescribe controlled substances in Schedule 2, 2N, 3, 3N, 4 and 5 to the "ultimate user" as defined in 21 U.S.C. § 802(27). The "ultimate user" or otherwise known as the patient has no authority to distribute the controlled substance to others including the DEA registrant (SMITHERS) and SMITHERS has no authority to possess the ultimate user's controlled substance prescription. SMITHERS' registered location, as shown on the DEA Registration is Commonwealth Family Physicians, 445 Commonwealth Blvd., East, Suite A, Martinsville, Virginia 24112. The mailing address on SMITHERS' registration was 7133 W Friendly Avenue, Unit E, Greensboro, North Carolina from September 2014 until August 21, 2015, at which time it was changed to the current registered address in Martinsville, Virginia. Previous registered addresses include 500 Cherry Street, Bluefield, West Virginia; 108 Lockhead Drive, Beaver, West Virginia; and 2401 South Kanawha Street 102, Beckley, West Virginia, where SMITHERS established PRIORITY URGENT CARE. A search of corporate filings on respective Secretary of State websites in North Carolina and West Virginia revealed negative results for corporations associated with SMITHERS. A corporate filing for SMITHERS COMMUNITY HEALTHCARE (SCH) was registered on September 18, 2015 in the Commonwealth of Virginia under SCC ID: 07961030, but current status of the corporation shows "Terminated."

6. Since September 2015, SMITHERS has been operating THE CENTER FOR INTEGRATIVE HEALTH AT SMITHERS COMMUNITY HEALTHCARE (CIHSCH), located at 445 Commonwealth Blvd. East, Suite A, Martinsville, Virginia.

7. In October 2015, members of the RRO TDS received information from an outside source that SMITHERS was possibly operating a "pill mill"¹ in Martinsville, Virginia. The RRO TDS initiated an investigation of SMITHERS on or about October 5, 2015.

8. On March 7, 2017, the RRO TDS and other members of the RRO, executed a federal search warrant on a 2009 Toyota Camry registered to Joel SMITHERS, 202 Top Water Lane, Greensboro, North Carolina 27455. The Toyota was parked in the parking lot of CIHSCH. During the search, investigators found \$29,532 in cash in the glovebox and a black Swiss Gear backpack located on the passenger side floor. The backpack contained four bottles (two Hyland's Nerve Tonic bottles, one Nature's Way MEGA-DHA Premium Fish Oil bottle, and a Tylenol Extra Strength bottle), one Altoids Smalls metal container, and a neck chain with a bullet that opens. The bottles and metal container held various types of pills². Photographs of the prescription medication are labeled as Attachment A and attached hereto and incorporated by reference. Within the Nature's Way MEGA-DHA Premium fish oil bottle investigators located four zip-lock glassine baggies containing approximately 40 tablets presumptively identified as 10mg oxymorphone. Based on the training and experience of your Affiant, controlled substances are packaged in such a way for illegal distribution.

9. One Hyland's Nerve Tonic bottle contained controlled substances as well as non-controlled substances. The controlled substances are listed below:

SCHEDULE II

- 1 Hydrocodone 10/325

¹ A pill mill is a term utilized to describe a doctor's office, clinic, or health care facility that routinely conspires in the prescribing and dispensing of controlled substances outside the scope of the prevailing standards of medical practice in the community or violates the laws of the state regarding the prescribing or dispensing of controlled prescription drugs.

² All quantities and potential identities of controlled substances are presumptive based on training and experience of your affiant pending confirmation from the Mid-Atlantic laboratory.

- 15 Hydromorphone 2mg 2LC1(also contained 12 half pieces, 4 smaller pieces)
- 1 Methadone 10mg
- 8 Hydromorphone 4mg
- 1 Hydrocodone 10/325

SCHEDULE IV

- 14 Tramadol 50mg (oblong 377)
- 14 Tramadol 50mg (round AN627)

10. The other Hyland's Nerve Tonic bottle contained the following controlled substances as well as non-controlled substances and unknown pills. The controlled substances are listed below:

SCHEDULE II

- 19 OxyContin 30mg

SCHEDULE IV

- 8 Tramadol HCL 50mg

11. The Tylenol bottle contained the following controlled substances as well as non-controlled substances. The controlled substances are listed below:

SCHEDULE II

- 33 Oxymorphone HCL 10mg

SCHEDULE IV

- 110.5 Alprazolam 1mg

12. The MEGA-DHA fish bottle contained the following controlled substances as well as non-controlled substances. The controlled substances are listed below:

SCHEDULE II

- 69 Oxymorphone HCL ER 5mg
- 10 Hydromorphone HCL 4mg
- 53 Hydromorphone 4mg
- 156 Opana ER 5mg
- 6 Opana ER 20mg
- 40 Opana ER 10mg
- 23 Morphine 30mg
- 79 Morphine 15mg

- 9 Oxymorphone HCL XR 10mg
- 40 Oxymorphone HCL XR 10mg (4 baggies with 10 pills in each bag)

SCHEDULE IV

- 5 Alprazolam 1 mg (4 half pieces) 7 total
- 26 Tramadol 50mg
- 60 Clonazepam .5mg

SCHEDULE V

- 34 Lyrica 25mg

13. The Altoids Smalls container contained 15 different kinds of what appeared to be non-controlled substances.

14. The bullet shaped pill holder contained an unknown number of tablets suspected to be a benzodiazepine.

15. A substantial number of the non-controlled substances are muscle relaxers. Muscle relaxers are often used by drug abusers in conjunction with opiates to heighten the effect of the opiate.

INTERVIEW OF JOEL SMITHERS ON 03-07-17

16. On March 7, 2017, Special Agent (SA) Patrick Long and HHS SA Rob Slease interviewed SMITHERS about the controlled and non-controlled substances that were found in his vehicle. The interview took place at CIHSCH. The following information was stated in substance and not verbatim, and is intended to be a summary.

17. Investigators showed SMITHERS the pills that were found in SMITHERS' backpack located in SMITHERS' vehicle. SMITHERS appeared to be surprised by the amount of pills found in SMITHERS back pack and stated "oh wow" they were supposed to be disposed of and was not sure why they were in SMITHERS' backpack. SMITHERS was shown the baggies and was asked about having them in SMITHERS' possession. SMITHERS stated that he knew a female patient kept those in her pill bottle in a safety deposit box. SMITHERS stated that he could not remember her name but Wendell WILSON (WILSON) probably could. SMITHERS stated the pills hurt her stomach. SMITHERS stated that the patients keep their bottle due to it having their personal information on it. When asked why he takes them back SMITHERS replies by saying he doesn't have confidence that his patients will destroy them on

their own. SMITHERS stated the standard practice was to get together with WILSON and document the destruction of the medication that was returned in the patient's file and destroy it by flushing it down the toilet. SMITHERS acknowledged that he had the pills in SMITHERS possession and that all the pills including the ones in the baggies should have been disposed of. When asked how long the medication had been in his car SMITHERS replied by saying that the backpack was in his office yesterday and all of last week and the medication in the plastic baggies was given to SMITHERS approximately 2-3 weeks ago. SMITHERS stated that the patient may be ES and SMITHERS thought she was on 5 or 10mg oxymorphone and replaced it with OxyContin. On March 9, 2017 SMITHERS called the Roanoke DEA office and stated to investigators that he thought the patient who brought in the medication in the plastic baggies was ZB. On March 10, 2017 SMITHERS called the Roanoke DEA office again to provide a new patient name for the person who brought in the medication in small plastic baggies. The patient's name was BF and he/she brought in an additional medication, OxyContin 10mg, on March 9, 2017 to SMITHERS for disposal.

INTERVIEW OF BF ON 08-03-2017

18. On August 3, 2017, DEA RRO TDS Task Force Officer David Clements and HHS SA Slease conducted an interview of BF who was currently incarcerated at the South Central Regional Jail located in the vicinity of 1001 Centre Way, Charleston, West Virginia. The interview was in regard to SMITHERS and CIHSCH. The following information was stated in substance and not verbatim, and is intended to be a summary.

19. Prior to the interview, BF was advised of her (BF) Miranda Rights via DEA Form-13. BF signed the DEA Form-13 and advised she understood her (BF) rights and agreed to speak with investigators. BF stated she (BF) has been a patient of SMITHERS since approximately November 2016. BF advised she (BF) was aware that SMITHERS was currently under investigation by the DEA. Spontaneously and unprompted, BF stated she (BF) had previously provided SMITHERS with medication contained in zip-lock glassine baggies that were located during the search warrant conducted at CIHSCH. BF stated she (BF) wanted to return/dispose of the medication because she (BF) experienced heartburn when ingesting the medication.

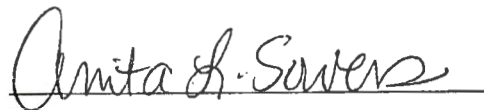
20. BF related she (BF) initially attempted to return the medication to an unspecified pharmacy and police department. BF

stated both the unspecified pharmacy and police department were willing to dispose of the medication but would not provide her (BF) a receipt indicating quantity/type of medication that was disposed. BF stated she (BF) contacted Wendell WILSON (WILSON) of CIHSCH who advised BF to bring the medication to CIHSCH for disposal/destruction. TFO Clements and SA Slease provided BF photographs of seized medication during the execution of the search warrant of CIHSCH labeled as Attachment B and attached hereto and incorporated by reference herein. BF indicated the four zip-lock glassine baggies were hers (BF) and she (BF) had previously returned the medication to WILSON for destruction purposes. Based on the training and experience of your Affiant, the four zip-lock glassine baggies contained approximately 40 tablets presumptively identified as 10mg oxymorphone.

21. Additionally, BF indicated on one other occasion she (BF) had provided prescription medication to WILSON for destruction/disposal purposes. Mr. Fisher stated she (BF) was required to sign a document indicating the medication was disposed/destroyed. BF related she (BF) was aware of one additional patient who also provided medication to WILSON for destruction/disposal purposes.

22. A review of BF's West Virginia Controlled Substance report indicates that SMITHERS last issued a prescription for oxymorphone to BF on January 12, 2017.

23. Wherefore, based on the foregoing facts and evidence, your Affiant believes that there is probable cause to believe, that, on or about March 7, 2017, defendant Joel A. SMITHERS knowingly and intentionally possessed with the intent to distribute Schedule II controlled substances, in violation of Title 21, United State Code, Sections 841(a)(1) and 841(b)(1)(C).

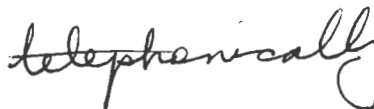


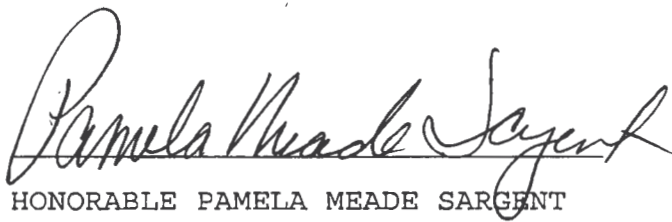
Anita L. Sowers

Task Force Officer

Drug Enforcement Administration

Sworn to and subscribed before me
this 10th day of August, 2017



A handwritten signature in cursive script, reading "Pamela Meade Sargent", written over a horizontal line.

HONORABLE PAMELA MEADE SARGENT

United States Magistrate Judge

ATTACHMENT A

Photographs of prescription medications found in possession of Dr. Joel A. SMITHERS during the execution of a federal search warrant executed at SMITHERS COMMUNITY HEALTHCARE (aka CENTER FOR INTEGRATIVE HEALTH AT SMITHERS COMMUNITY HEALTHCARE) on March 7, 2017



03/09/2017



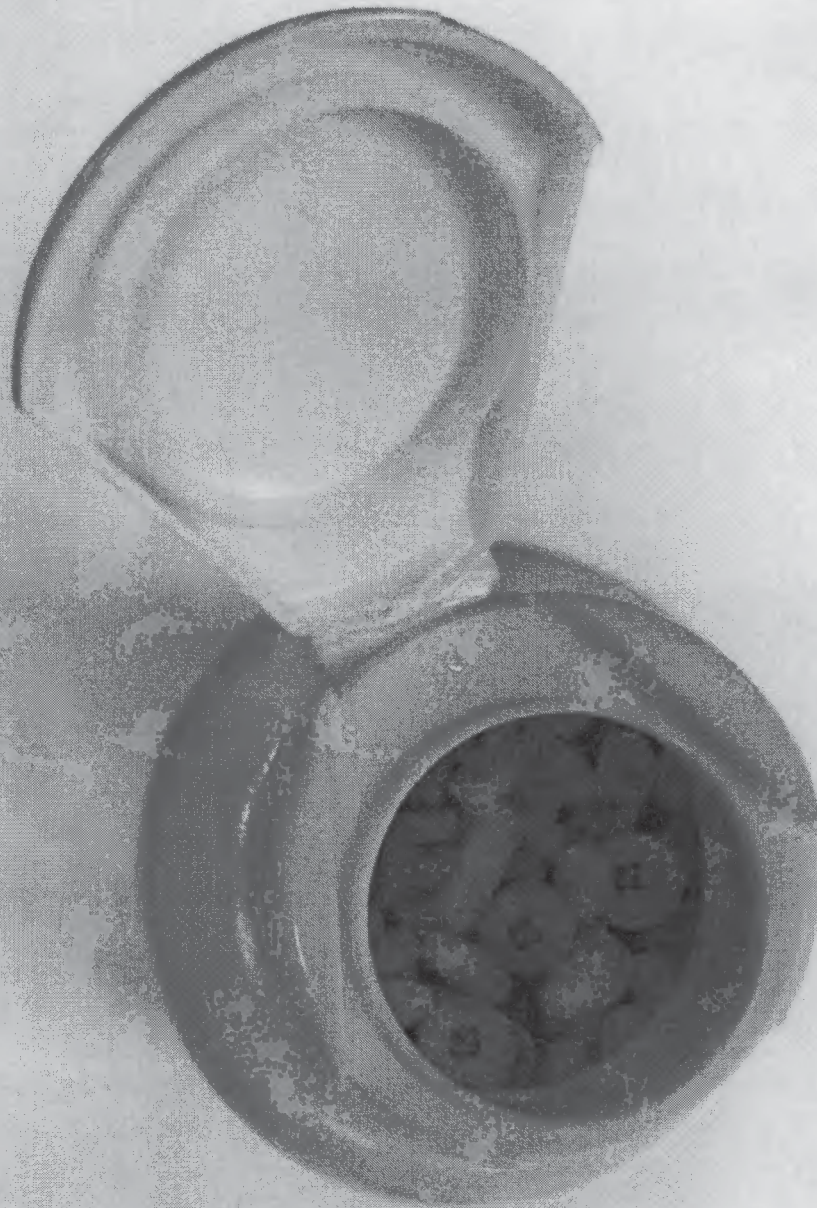
03/09/2017



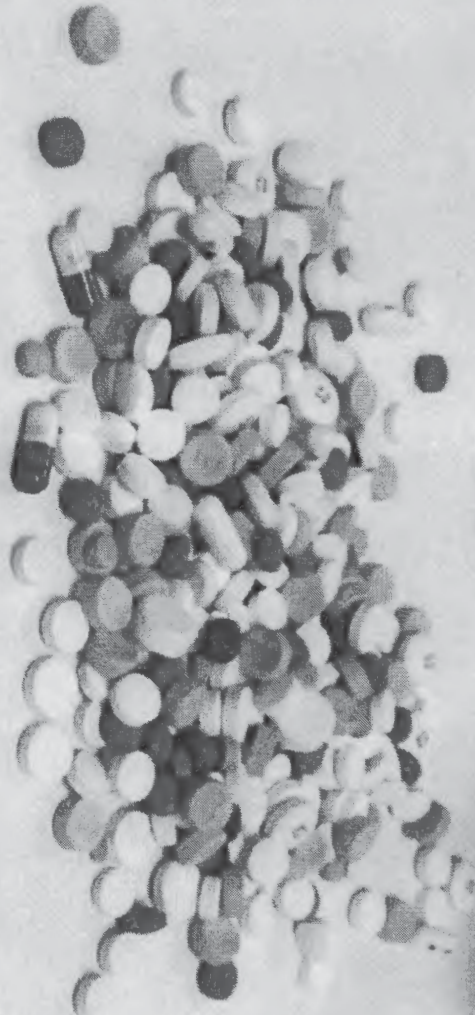
03/09/2017



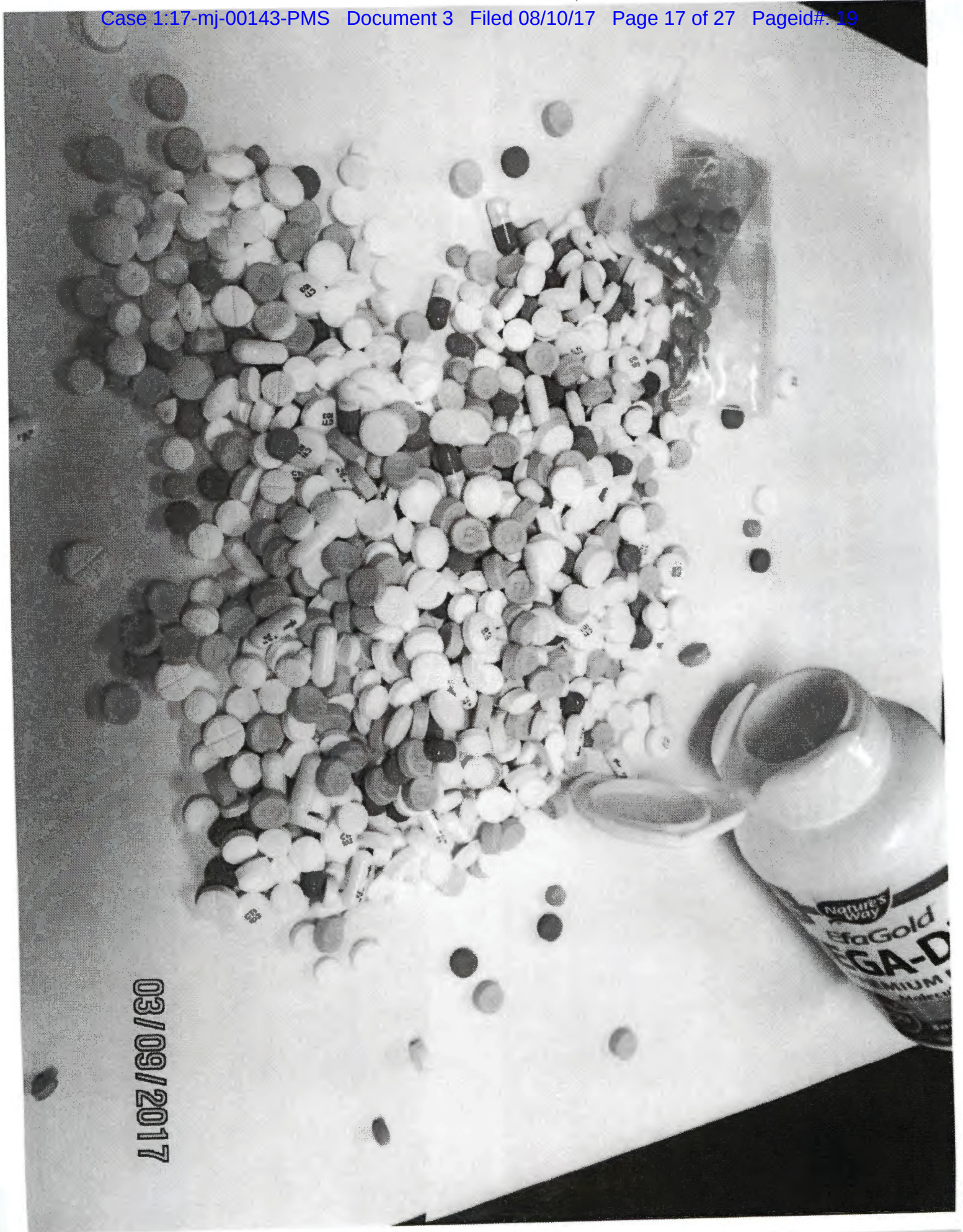
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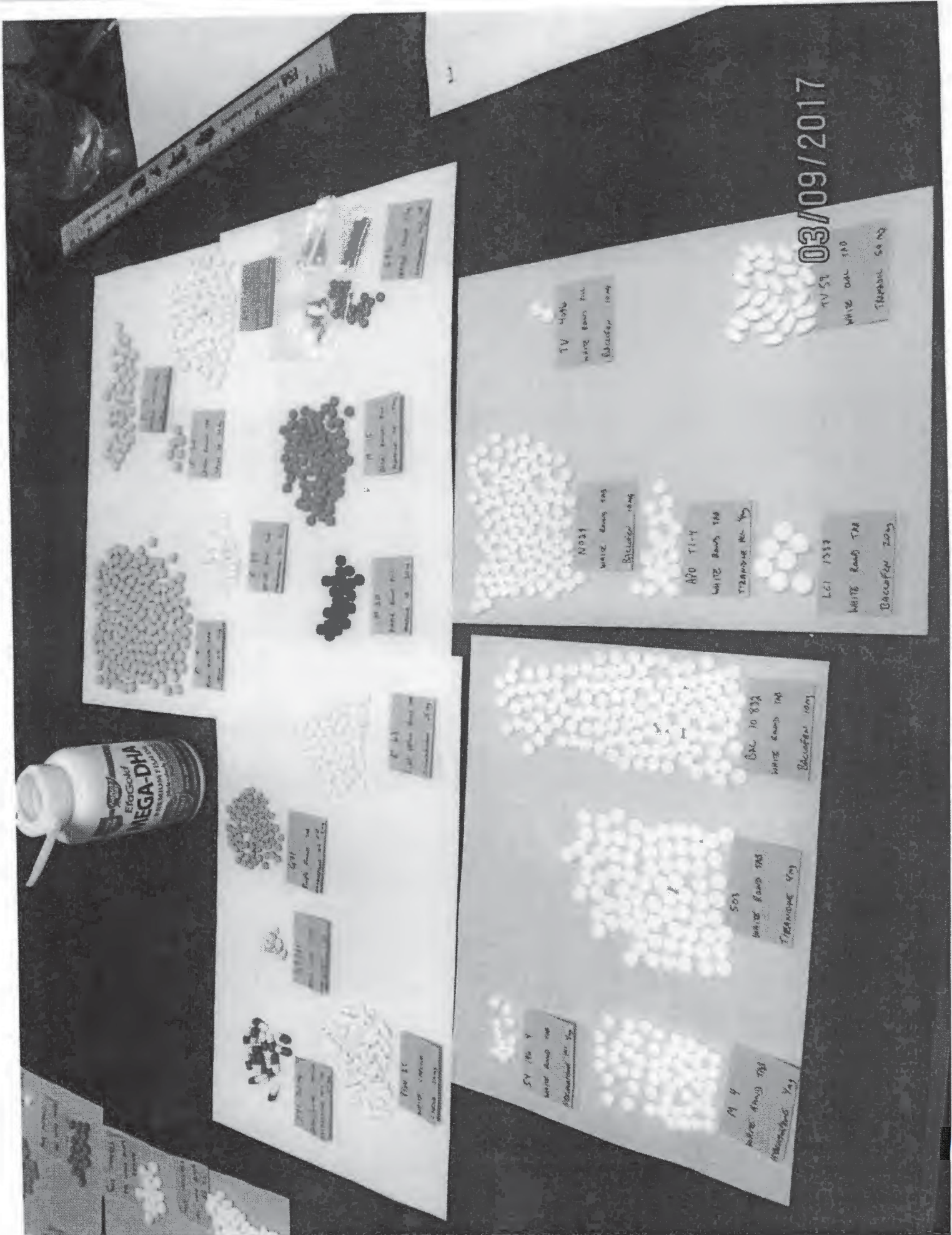
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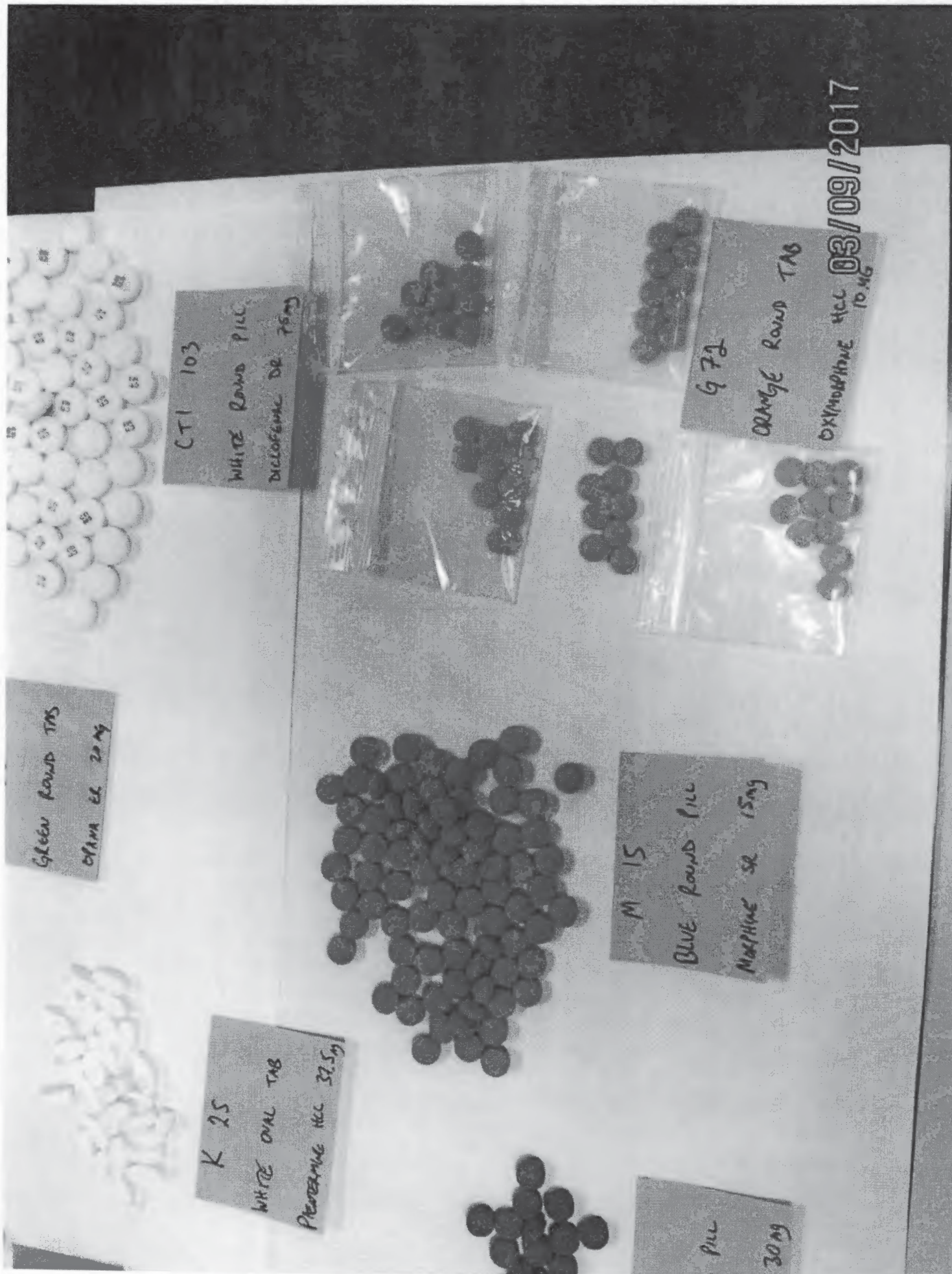


03/09/2017



03/09/2017





Green Round TABs
20mg

K 25
WHITE OVAL TAB
Pseudoephedrine HCL 37.5mg

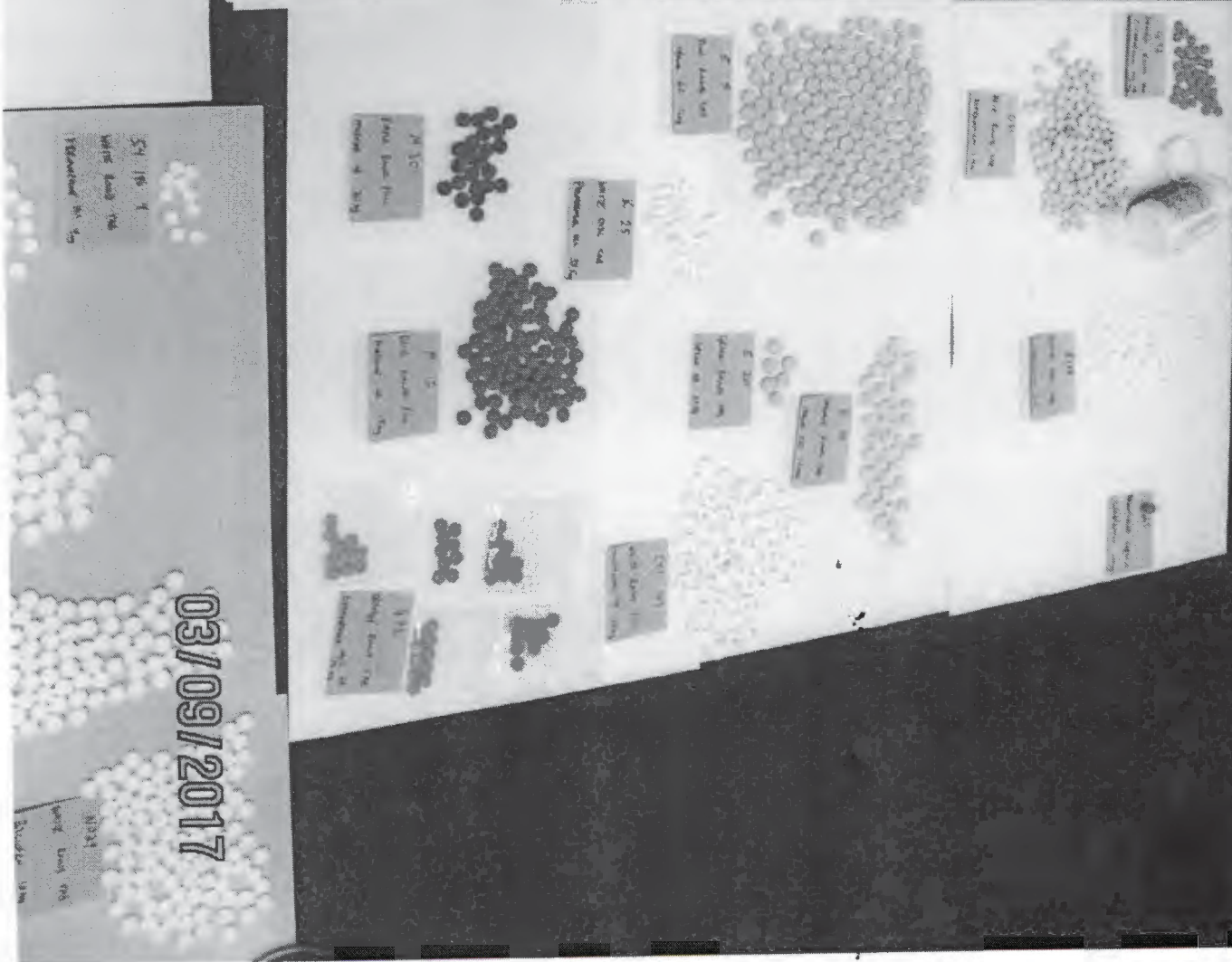
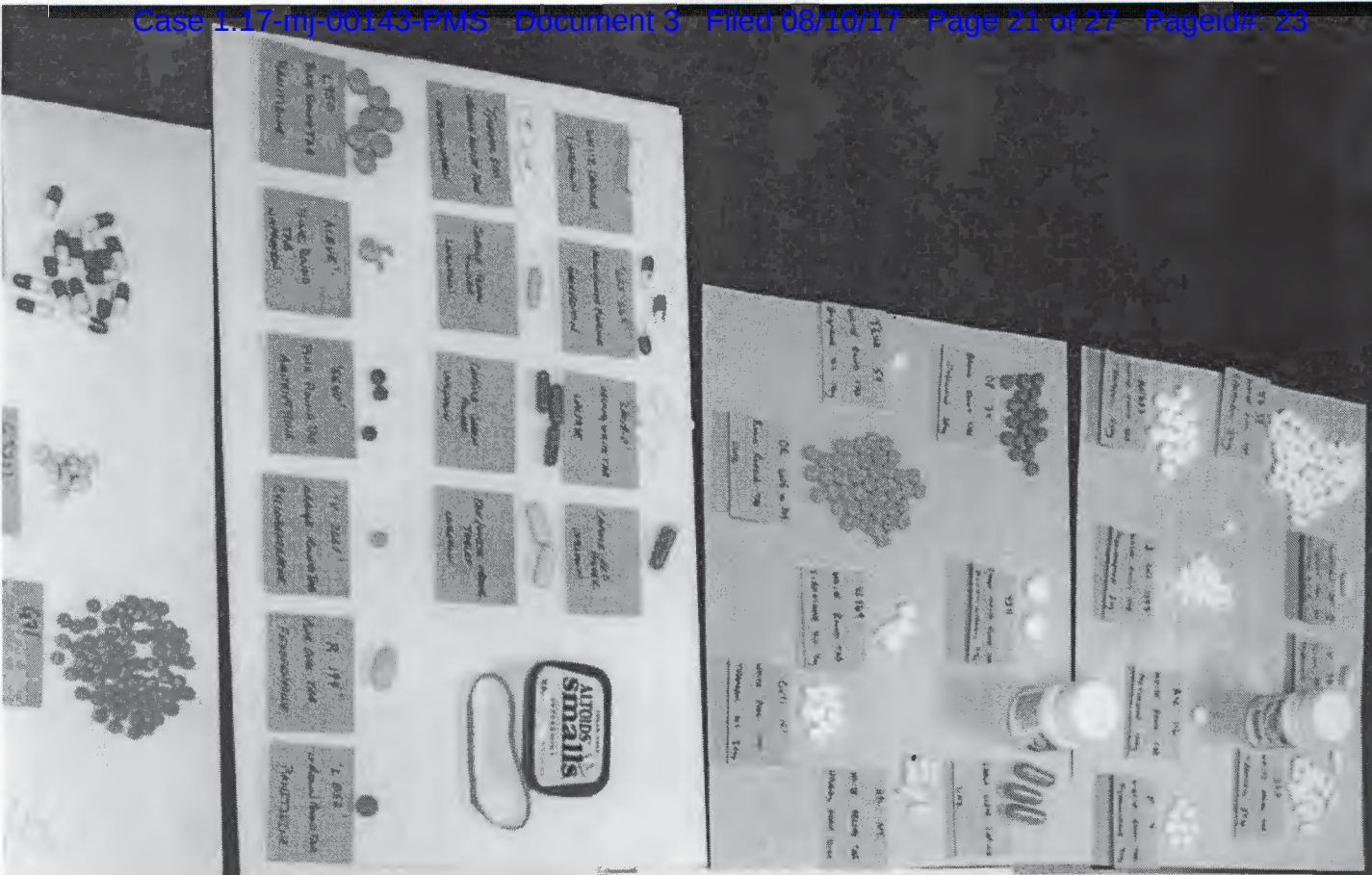
CT1 103
WHITE Round PILL
Diclofenac SR 75mg

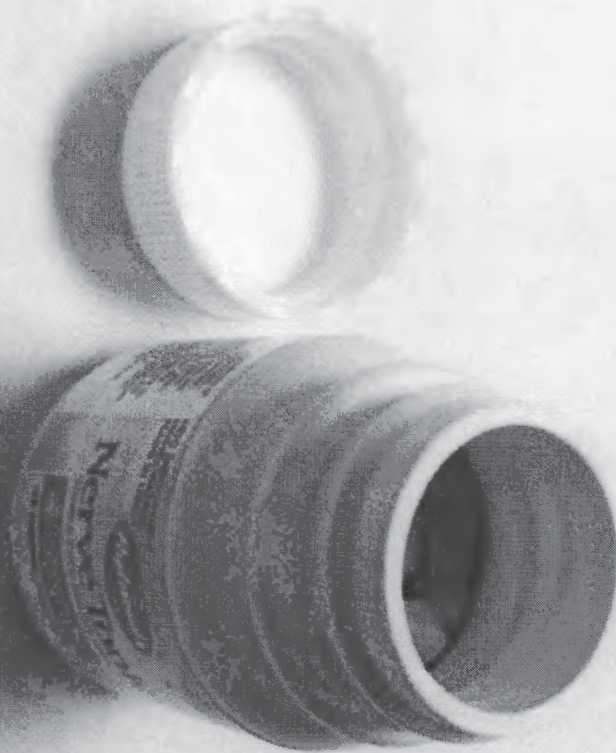
M 15
BLUE Round PILL
Morphine SR 15mg

972
ORANGE Round TAB
Oxycodone HCL 10mg

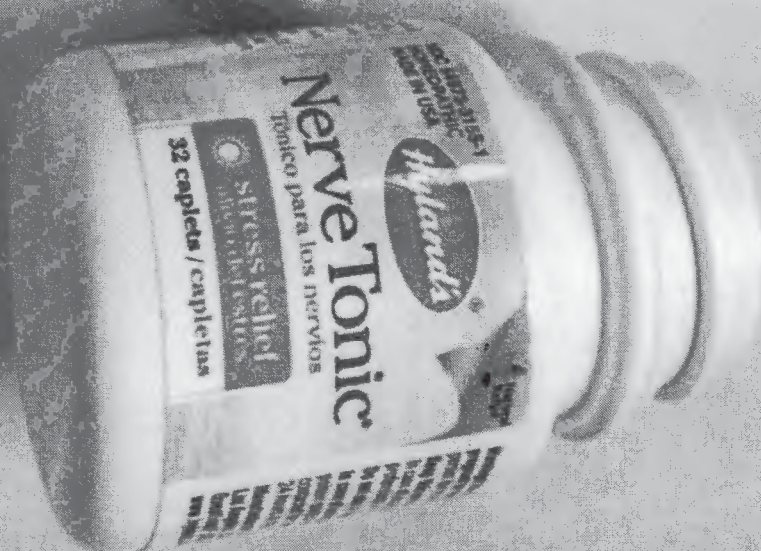
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03/09/2017

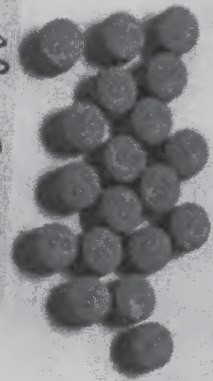




03/09/2017



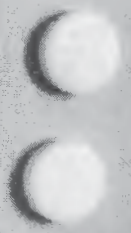
03/09/2017



OP 30
Brown Round TABS
Oxycodone 30mg



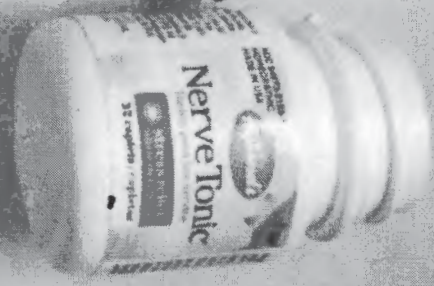
TEVA 54
White Round TABS
Hydrocodone Bitartrate 10mg



4211
Large White Round TABS
METHOCARBAMOL 500



U169
White Round TABS
TIENAMIDINE HCL 4mg



Large Oval Capsule
VPR



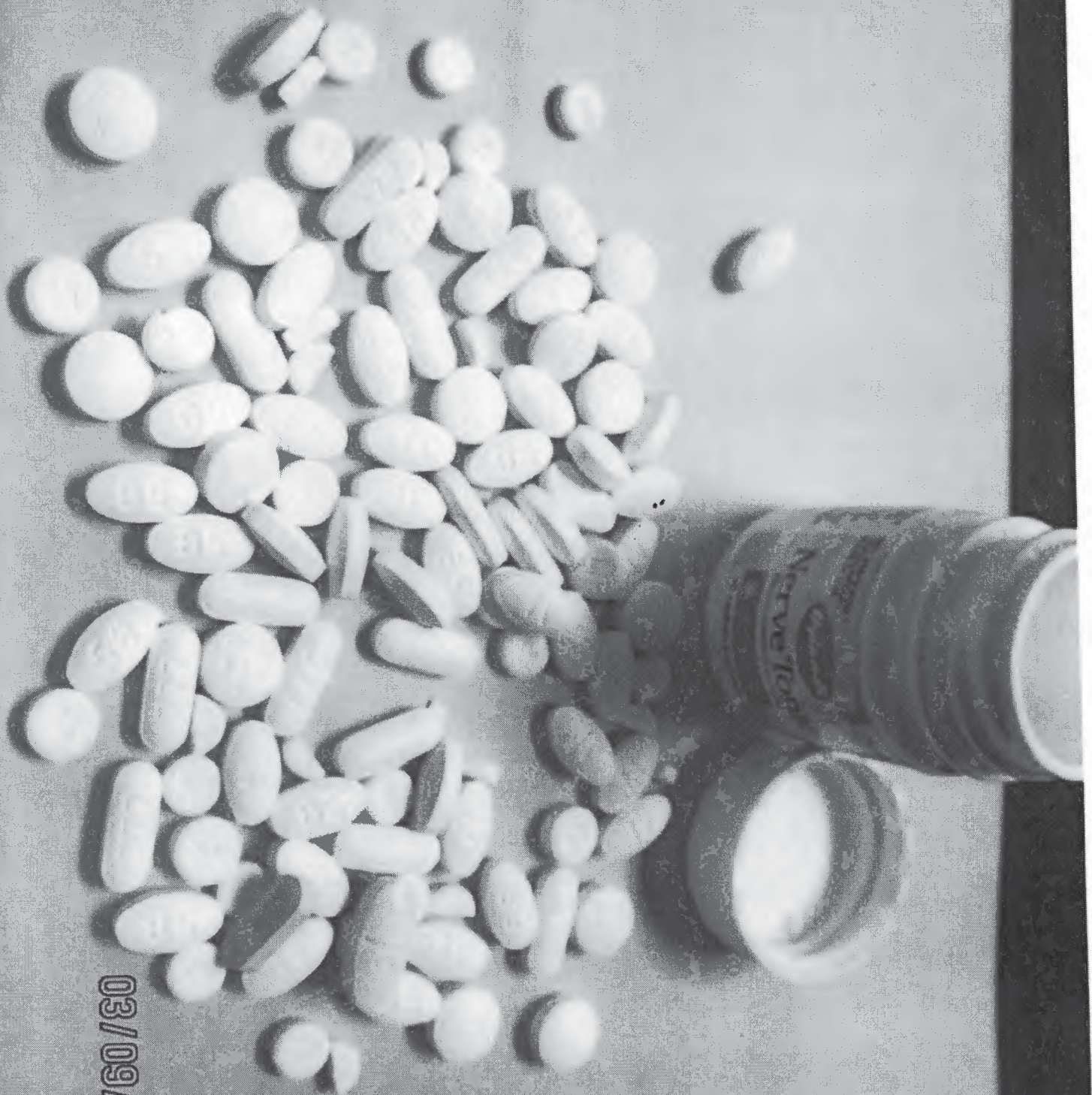
HPL NT
White Oblong TABS
HYLANDS NEURINE DMC



Q011 101
White Oval TABS
TRAMADOL HCL 50mg

OR 606 & 909
Round Reddish TABS
UNK

03/09/2017



03/09/2017



03/09/2017



TV 58
WHITE oval TAB
Tylenol 3 50mg



AN 627
WHITE round TAB
Tylenol 3 50mg



WATSON 395 50
GREEN oval TAB
Naloxone HCl &
Pentazocine HCl



2 LCI 1353
WHITE round TAB
Hydromorphone 2mg



V 36 01
Yellow oblong TAB
Hydrocodone 10/325



ASC 116
WHITE round TAB
METHADONE 10mg



377
WHITE oblong TAB
Tylenol 3 50mg



M 4
WHITE round TAB
Hydromorphone 4mg
03/09/2017